IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4196 of 2005

Between:

1 A. Satyanarayana Reddy S/o Chinna Nagi Reddy
BDO Street, Sree Ram Puram Gurazala Post & mandal Guntur District
2 P. Narasimha Rao S/o Seshaiah
BDO Street, Sree Ram Puram Gurazala Post & mandal Guntur District
3 B. Venkateswarlu S/o Kotaiah
Gurazala Post & mandal Guntur District
4 V. Zakariah S/o Anandam
Opp. Luthuru Church, Gurazala post & Mandal Guntur District
5 R.S. Gopala Rao S/o Peraiah
Near Travellers Bungalow Gurazala Post & mandal Guntur District
6 A.S. Reddy S/o Koti Reddy
Narayanapuram Dochapalli Mandal Guntur District
7 M. Venkateswarlu S/o Nagaiah
Near Lakshmi Talkies Gurazal Post and Mandal Guntur District
8 D. David Raju S/o Raja Rao
Beside Baptist Church Gurazala Post and Mandal Guntur District
9 K. Jagannadha Rao S/o Venkateswarlu
Gurazala Post and Mandal Guntur District
10 Ch. Srinivasa Rao S/o Raja Rao
Gurazala Post and Mandal Guntur District
11 P. Venkateswarlu S/o Muthyam
G.I.C. Colony, Gurazala Post and Mandal Guntur District

..... PETITIONERS

AND

1 The Presiding Officer, Labour Court, Guntur
2 The State of A.P., rep by Secretary, Industries & Commerce Dept, Secretariat, Hyderabad.
3 The Director of Sugar and Cane Commissioner, 1st Floor, M.J. Road, Nampally,

Hyderabad
4 The Nagarjuna Co-op Sugars Ltd., rep, by Managing Director, Gurjala, Guntur District.
5 Public enterprises Department rep by Secretary, Secretariat, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Writ order or direction more particularly one in the nature of Writ of Certiorari calling for the records leading up to and inclusive of Order dated 23-12-2004 passed by the 1st Respondent herein in C.F.R. No. 4319 of 2004 (1st Petitioner), CFR. No. 4321 of 2004 (2nd Petitioner C.F.R. No. 4326 of 2004 (3rd Petitioner C.F.R. No. 4273 of 2004 (4th petitioner C.F.R. No. 4325 of 2004 (5th Petitioner), C.F.R. No. 4309 of 2004 (6thPetitioner), C.F.R. No.4313 of 2004 (7th Petitioner), CFR 4269 of 2004 (8th Petitioner), C.F.R. No. 4281 of 2004 (9th Petitioner), C.F.R. No. 4322 of 2004 (10th Petitioner) and C.F.R. No. 4328 of 2004 (11th Petitioner) and set a side the same as being illegal, arbitrary and contrary to the provisions as of Industrial Disputes Act 1947 and also orders inWP No 16916 of 1998 and direct the 1st Respondent herein/Labour Court to dispose of the claim petition filed by the petitioners in Accordance with law and pass such other or further orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner: MR.G.RAMESH BABU

Counsel for the Respondents: GP FOR LABOUR

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 4196 of 2005

O R D E R:

Challenging the order dated 23.12.2004 passed by the 1st respondent herein as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioners herein were the employees of the 4th

respondent. Due to certain problems, the 4th respondent declared lay off through proceedings dated 26.6.1995 and the same was continued from year to year till the same was sold to the 3rd respondent by exercising the powers under Section 12 of the A.P. Cooperative Societies Act. The petitioners were laid off and they continued as employees till V.R.S. was taken by them. The petitioners were paid lay of compensation in accordance with Section 25C of the Industrial Disputes Act, 1947 by the Management till July, 1995 and thereafter in spite of several representations the then management has not paid lay off compensation. While so, the Government vide G.O.Ms.No. 25 dated 21.5.2001 provided special compensation package for employees in the course of privatization. The employees were asked to give their consent for transfer to new management. The 5th respondent herein paid V.R.S. benefits to all the employees who were not offered employment by the new management including the petitioners. At that time the petitioners made representation to the Government for granting lay off compensation but the 4th respondent stated that the reason for non-inclusion of lay off compensation in benefits is the pendency of W.P. 16916 of 1998. The petitioners state that the said writ petition was disposed of on 13.10.2004 directing the petitioners to approach the Labour Court by filing a claim petition. In pursuance of the said orders, the petitioners filed claim petition under Section 33-C (2) of the Industrial Disputes Act but the same was rejected by the Labour Court without giving any notice vide its order dated 23.12.2004 on the ground that the application is not maintainable. The petitioners state that the said order is illegal on the ground that this court granted liberty to the petitioners to approach the Labour Court. Hence the present writ petition.

Learned counsel for the petitioners contended that though at present there is no employer and employee relationship between the petitioner and the 4th respondent, the petitioners were workmen for the period for which they claim relief and that as per the directions of this court in W.P. 16916 of 1998 dated 13.10.2004, the

Labour Court has to decide the claim and hence he prays to set aside the impugned proceedings and direct the 1st respondent to take the case on file and dispose of it in accordance with law.

On the other hand, learned counsel for the respondents contended that since the petitioners accepted the voluntary retirement scheme, it is established that they have foregone all the claims and there is no employer and employee relationship and hence he prays to dismiss the writ petition.

The factual matrix is not seriously disputed before this court. The petitioners were the employees of the 4th respondent – sugar factory. The 4th respondent – sugar factory declared lay off through proceedings dated 26.6.1995 and the same is being extended from time to time. Thereafter the said sugar factory was sold to 3rd party. The petitioners continued as employees till V.R.S. was taken by them. In accordance with Section 25C of the Industrial Disputes Act the Management paid lay off compensation till July, 1995. In pursuance of G.O.Ms.No.25 Public Enterprises (II) Department dated 21.5.2001, the employees got special compensation package but the said G.O. is silent with regard to the lay off compensation. According to the petitioners, the Managing Director of the 4th respondent informed them that the reason for non-inclusion of the lay off compensation is because of pendency of W.P. 16916 of 1998, which was disposed of by this court on 13.10.2004 in the following terms:

> "Be that as it may, in the circumstances of this case, I am of the considered opinion that the petitioner should approach the appropriate Labour Court or the Industrial Tribunal and work out its remedies by way of a claim petition and by leading appropriate evidence before the said court. The petitioner can raise all the questions, which are available to it, including those which have been raised in this writ petition. Therefore, the writ petition is disposed of

> giving liberty to the petitioner to approach the appropriate Labour Court or Industrial Tribunal by filing an appropriate claim petition. On filing such a claim petition, the labour court/industrial tribunal shall entertain the same and decide on merits within a period of six months from the date of filing of such a petition. No costs".

In pursuance of the said orders, the petitioners approached the Labour Court which passed the impugned orders on the ground that under Section 2(s) of the I.D. Act there are four categories of workmen, 1) persons presently employed, 2) persons dismissed from service, 3) persons discharged from service and 4) persons retrenched from service and except the aforesaid persons no other persons come under Section 2(s) of the I.D. Act and since the petitioners are retired from service they do not come under the meaning of 'workmen' within the definition of Sec. 2(s) of the Act and hence the claim petition was rejected.

W.P. 16916 of 1998 was filed by Nagarjuna Cooperative Sugar Factory Employees Union. The issue whether the members of the said union who have taken voluntary retirement come within the meaning of workmen under Section 2(s) of the I.D. Act was not decided by this court in the said writ petition. However, this court directed the petitioner – union therein to approach the Labour Court by filing an appropriate claim petition and on such filing the Labour Court was directed to entertain the same and decide the case on merits.

Learned counsel for the respondents relied upon a decision of the apex court in **A.K. Bindal v. Union of India** held:

> "This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the scheme and his option is accepted. The amount is paid not for doing any work or rendering any

> service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as “Golden Handshake”. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for voluntary retirement scheme and has accepted the amount paid to him, the whole purpose of introducing the scheme would be totally frustrated”.

So, from the above decision it is clear that when an employee has accepted the voluntary retirement scheme and received the amounts, the question of again agitating for any kind of his past rights with his erstwhile employer does not arise.

Learned counsel for the respondents also relied upon a decision in **PAL v. PAL VRS Employees Welfare Association** wherein the Bombay High Court held:

> “Therefore the moot question before us is whether the said ex-employees have any “existing individual rights” when they moved the application under Section 33-C(2) of the said Act. The clear answer in my considered view is emphatic ‘no’. This is quite obvious from the terms and conditions of the

> Voluntary Retirement Scheme opted by the said individual ex-employees and hence, I hold that the said members of respondent No.1 are neither the workmen as contemplated under Section 2(s) of the said Act, nor there is any "existing individual rights" vested in them qua the petitioner's case admittedly they have parted permanently from their employment by obtaining all the benefits and payments of final settlement under the scheme".

So, from the above decision also it is clear that the petitioners herein who have accepted the voluntary retirement scheme are not the workmen within the meaning of Section 2(s) of the Act. When the jural relationship of employer and employee comes to an end after the amount was paid, the petitioners cease to be under the employment of 4th respondent. Therefore, the question of again agitating for any kind of their past rights with their erstwhile employer including making claim for lay off compensation cannot be entertained.

However, the learned counsel for the petitioners relied upon a decision in **Government Soap Factory, Bangalore v. Labour Court** wherein it is held:

> "We are in respectful agreement with the view expressed in the above decisions of the Madras High Court. We think the Labour Court was right in following the aforesaid decisions and holding that it was competent for respondents 2 and 3 to make the application under Section 33-C(2) of the I.D. Act even though they had retired from employment of the factory".

There is no dispute with regard to the proposition of law laid down by the Mysore High Court, but the said decision has no application in view of the fact that the petitioners herein are not the

persons who retired from service after superannuation and the claim is relating to the period they have worked. In this case, the employees opted for the voluntary retirement scheme and therefore they have no individual right to claim any benefit under Section 33-C(2) of the Act.

Now the question is whether there is any error of law apparent on the face of the record so as to call for interference by this court exercising its Certiorari jurisdiction.

It is settled law that when there is error of law apparent on the face of the record or the findings are not based upon misinterpretation of law or the findings are perverse or illegal, then only this court can interfere with the matter. Relying upon the decisions of the apex court and the Bombay High Court cited above, the learned tribunal came to the conclusion that once the employees opt for voluntary retirement scheme and receive all the benefits, they are not entitled to agitate for any right to claim any benefits existed prior to their voluntary retirement and hence rejected the petition. Since the exercise of jurisdiction is involved, the tribunal has rightly exercised its jurisdiction in rejecting the petition since the petitioners do not come within the meaning of workmen under Section 2(s) of the I.D. Act. Though this court directed the tribunal to decide the matter on merits, but in view of the fact that the petitioners are not the workmen within the meaning of Sec. 2(s) of the Act the petition was rightly rejected since it is a question of exercise of jurisdiction. The law laid down by the apex court squarely applies to the facts of the case. Therefore, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court.

The writ petition is devoid of merit and it is accordingly dismissed.

K.C. Bhanu, J.

Date: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Presiding Officer, Labour Court, Guntur
2 The Secretary, State of A.P., Industries & Commerce Dept, Secretariat, Hyderabad.
3 The Director of Sugar and Cane Commissioner, 1st Floor, M.J. Road, Nampally, Hyderabad
4 The Managing Director, Nagarjuna Co-op Sugars Ltd., Gurjala, Guntur District.
5 The Secretary, Public enterprises Department, Secretariat, Hyderabad

6. Two C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad (OUT).

7. 2 CD copies